IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 190 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?**-Yes.**

2 To be referred to the Reporter or not ?**-Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ?-**No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?-**No.**

5 Whether it is to be circulated to the civil judge ?-**No.**

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RAJESH HASTIMAL SHAH - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NM KAPADIA for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR PP MAJMUDAR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 25/04/2007

ORAL JUDGMENT

1. Rule. Learned APP Mr.K.C.Shah waives service of Rule for the respondent no.1-State of Gujarat.

2. Rajesh Hastimal Shah, petitioner has filed this petition with a prayer that this Court may be pleased to quash and set aside the order dated 4/4/2007 passed by the learned Additional Sessions Judge and Presiding Officer, Fast Track Court No.1, Valsad in Criminal Revision Application No.19 of 2007 regarding Criminal Case No.562 of 2007 pending before the Court of JMFC, Vapi. This petition has been filed on 8/4/2007. This Court has already passed orders on 13/4/2007 and 20/4/2007.

3. I have heard Mr.N.M.Kapadia, learned advocate for the petitioner, Mr.K.C.Shah, learned APP for the respondent no.1-State of Gujarat and Mr.Majmudar, learned advocate for the respondent no.2.

4. Mr.N.M.Kapadia, learned advocate has invited my attention to this very vehicle which was involved in connection with the carrying of animals to slaughter house. The learned Judicial Magistrate First Class, Gondal has passed an order on

28/9/2006 and released the truck on certain conditions. Contrary to the said order, it appears that one Allarakha had given power of attorney to Rafik Kasam Khorani and therefore he was again carrying animals and violating the provisions of Section 9(2) of the Bombay Essential Commodities and Cattle (Control) Act, 1958. The learned advocate has also invited my attention to the judgment of the Hon'ble Apex Court in the case of State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & ors, reported in 2006 (1) GLR 294. In that judgment the majority view has been expressed in connection with Article 37 in para 47. Article 48, 48A and 51A(g) are produced in para 48 of the judgment. The learned Trial Judge is requested to go through the said judgment in this behalf.

5. The learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of State of Uttar Pradesh v. Mustakeem & ors reported in 2002 (3) GLH (U.J.) 8. In the said judgment, the Hon'ble Supreme Court has observed

as under:

> “The State of Uttar Pradesh is in appeal against the direction of the Court directing release of the animals in favour of the owner. It is alleged that while those animals were transported for the purpose of being slaughtered, an FIR was registered for alleged violation of the provisions of Prevention of Cruelty to Animals Act, 1960, and the specific allegation in the FIR was that the animals were transported for being slaughtered, and the animals were tied very tightly to each other. The criminal case is still pending. On an appeal for getting the custody of the animals was filed, the impugned order has been passed. We are shocked as to how such an order could be passed by the learned Judge of the High Court in view of the very allegations and in view of the charges, which the accused may face in criminal trial. We therefore, set aside the impugned order and direct that these animals be kept in the Goshala and the State Government undertakes to take entire responsibility of the preservation of those animals so long as the matter is under trial.
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> The appeals stands disposed of accordingly.

Editors Note:

This order of the Hon'ble Supreme Court under the Prevention of Cruelty to Animals Act, 1960 has reversed the order of the High Court of Uttar Pradesh of giving custody of animals to the owner thereof, while transporting them for slaughter and when had invited prosecution under the Act for tying the animals tightly to each other.”

6. The learned advocate has also invited my attention to the policy of the Government which has been produced at page 61 of the petition where the Hon'ble the Chief Minister has answered in connection with animal taken to the slaughter house before legislative assembly.

7. In view of the same, learned advocate states that this Court must take very serious view and very strict action must be taken against the original owner of the vehicle, Mr.Allarakha in this behalf as though the JMFC, Gondal has passed an order, Allarakha has acted contrary to the same and again vehicle in question was given to present respondent

no.2 by way of power of attorney and the the respondent no.2 has also acted in such a way that animal were transported for the purpose of being slaughtered and animals were tied very tightly to each other and criminal case is pending. The learned Judge ought to have considered that the Hon'ble Supreme Court of India has taken very strict view in this behalf.

8. Mr.S.P.Majmudar, learned advocate has stated that if the vehicle in question is not allowed to use, then it will not work and he will lose his livelihood. He has given undertaking before this Court that he will not use the vehicle in question to carry out the animal to the slaughter house and he will not transfer the vehicle in question to anyone.

9. In view of the same, this revision application is finally disposed of with the following directions:

9.1) The learned Judge may hear Mr.Rajesh Hastimal Shah, Honorary Officer of Animal Welfare

Board of India in view of the judgment of the Division Bench of this Court in the case of Mirzapur Moti Kureshi Kassab Jamat v. State of Gujarat and others reported in 1999 (3) GLR 2007 wherein the division bench has in similar circumstances heard similar institute which was working for the animal welfare particularly para 25 at page 2018 where the Division Bench has considered the identical parties and considered their affidavits and also referred to the order of the Hon'ble Apex Court in this behalf. It is no doubt true that the matter was carried to the Hon'ble Supreme Court and the Hon'ble Supreme Court has partly reversed the judgment but that aspect has not been reversed by the Hon'ble Supreme Court of India in this behalf.

9.2) It is directed to the respondent no.2 that if the respondent no.2 will again found acting contrary to the directions given by this Court, then it will be open for the learned Judge to pass an appropriate order of confiscation of the vehicle in question.

9.3) It has been informed by the learned advocate that similar incidents happens day and day out and therefore, this Court hopes and trusts that the learned Judge must take into consideration these order as well as other orders passed by the Hon'ble Apex Court which I have referred and must consider the question of animals life also particularly in light of the Judgment of the Hon'ble Apex Court in this behalf.

9.4) This Court requests the learned Judge to consider these two judgments of the Hon'ble Apex Court and decide the application within two months from today.

10. Rule made absolute to the aforesaid extent. Direct service is permitted.

(K.M.Mehta, J.)

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